

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



**76-1229**

B P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA

Docket No. 76-1229

-against-

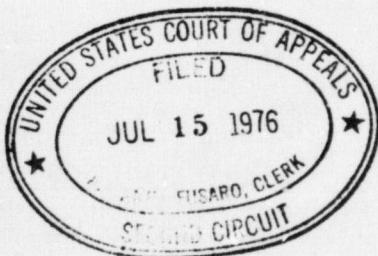
GAYLORD W. ANGUISH

Appellant

-----X

**APPENDIX**

JOHN C. CORBETT  
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Office & P.O. Address  
66 Court Street  
Brooklyn, New York 11201  
(212) 875-1975



**PAGINATION AS IN ORIGINAL COPY**

**INDEX TO APPENDIX**

	<b>PAGE</b>
Docket entries of District Court	1
Indictment	7
Decision of District Court dated February 10, 1976	9
Charge of Court	19

75CR 50 NEAHER, J.

DATE	PROCEEDINGS
/21/75	Before POOLING, J.- Indictment filed
/31/75	Before NEAHER, J.- Case called- Deft and counsel present- Deft arraigned and after being advised of his rights by the court and on his own behalf enters a <u>plea</u> guilty to count 2- Motion for reduction of bail- denied without prejudice- bail fixed at \$100,000.00 surety bond- sentence adjd without date- bail extended to N.Y. City only <sup>A</sup> case adjd to 2/7/75 at 10:00 A.M. to determine psychiatric treatment
/31/75	Notice of appearance filed
13/75	Before NEAHER, J.- Case called- Deft and counsel present- Deft to be sent to West Street for a psychiatric treatment before Dr. Golstein- Govt to submit order
	(OVER)

ANSWER

2

# 75CR 50 |

DATE	PROCEEDINGS
2-13-75	By NEAHER, J - Order filed that the deft be examined for the purpose of sentence (as to mental health of the deft) by Dr. Naomi Goldstein, at the Federal House of Detention for a period not to exceed 30 days and a written report of the results of such study be furnished to the Court as soon thereafter as possible.
3/7/75	By NEAHER, J. - Order dated 3/6/75 filed that the deft be taken to the office of Dr. Richard Kohl on 3/12/75, etc.
3/14/75	Certified copy of Order dated 3/6/75 retd and filed- executed
4-16-75	By NEAHER, J -Order filed to take the deft under security measures to the office of Dr. Richard Kohl located at the N.Y. Hospital, Payne Whitney Psychiatric Clinic at 2:30 PM on 4-24-75.
5-14-75	Before NEAHER, J - case called - deft & counsel R. Ballin present - case adjd to May 21, 1975 at 2:00 PM for sentence.
5/22/75	Before NEAHER, J.- Case called- Deft and counsel R. Ballin present- AUSA R. Katzberg to submit order committing deft for psychiatric observation-Defense counsel to submit order-Case adjd without date for sentence
5/23/75	By NEAHER, J. - Order of Commitment dated 5/22/75 filed that the deft G. Anguish is committed for psychiatric examination, etc. Copies sent to the Marshal.
5/23/75	Writ retd and filed. Executed.
5-27-75	By NEAHER, J - Order filed to take the deft, who is presently in custody of the U.S.Marshal, to the office of Dr.Richard Kohl, N.Y. Hospital, Payne Whitney Psychiatric Clinic at 3:00 PM on May 29, 1975 for therapeutic treatment on that date, etc. Copy to Marshal.
5-30-75	By Neaher, J - The defendant not having been brought for treatment as ordered, the date and time above stated are hereby amended to read "at 2:30 PM on June 4, 1975" and the order otherwise remains in effect. (see notation of Judge Neaher on bottom of Order of May 27,1975)
6-6-75	Order retd and filed - deft delivered to N.Y. Hospital, Psychiatric Clinic, Dr. Richard Kohl, to undergo treatment etc.
8/15/75	Stenographers Transcript dated 1/31/75 filed
8-21-75	2 Stenographers transcripts filed, one dated May 14 and one dated May 22, 1975.
8-28-75	Letter from deft filed for revoking his plea of guilty, etc. for requesting of minutes of all court actions ; for leave to allow the deft to proceed in forma pauperis, (pro se)all letters forwarded to Chambers.

75 CR--50  
CRIMINAL DOCKET

3

DATE	PROCEEDINGS
8-28-75	Stenographers transcript filed dated 2-13-75.
9/8/75	Before NEAHER, J.- Case called- Deft and counsel present counsel Robert Ballin's motion to be relieved-granted-
9/8/75	Financial affidavit filed
9-11-75	Motion for reduction of bail and brief in support of motion filed (forwarded to Chambers)
10/1/75	Notice of motion to withdraw plea of guilty filed-ret. 10/10/75
10-1-75	Govts Memorandum of Law filed.
10-2-75	Order received from Chambers unfiled (for release of deft to the office of Dr. Richard Kohl, etc) Notation by Judge Neaher on bottom of letter as follows: The within application is denied. If psychiatric counseling is required, the available facilities at the Metropolitan Correction Center are to be utilized. (dated Oct. 1, 1975 but received in Clerks Office on Oct. 2, 1975 for filing)
10/10/75	Before NEAHER, J.- Case called- Deft and counsel present- deft's motion to withdraw plea adjd without date- deft's motion to reduce bail- decision reserved-bail of \$100,000.00 contd-
10/10/75	By NEAHER, J.- Order filed that deft be examined as to his mental condition at Kings County Hosp. by Dr. D. Schwartz, etc.
10-29-75	Before NEAHER, J - case called - deft & counsel John Corbett present - defts motion to withdraw previously entered plea of guilty argued - motion granted - execution stayed for 24 hours - bail contd.
10-30-75	Stenographers transcript filed dated Oct. 29, 1975
10/31/75	Before NEAHER, J.- Case called- Deft not present- counsel present-deft's motion to withdraw plea of guilty-motion granted on 10/29/75-execution of withdrawal of plea stayed indefinitely
11-6-75	By NEAHER, J - Order filed that the deft be examined at the Medical Center, Springfield, Mo. and a written report of such examination be rendered to the Court , said examination not to exceed 15 days, etc.
11-13-75	Order of Certified copy of <del>Amendment to</del> Commitment retd and filed - Deft delivered to Springfield Medical Center, Springfield, Mo.
12-12-75	Before NEAHER, J - case called - deft & atty John Corbett present - adjd to Jan. 12, 1976 for hearing - bail contd.
1/6/76	Before NEAHER, J.- Case called- counsel present- govt's application for ruling on atty-client privilege- granted

4

DATE	PROCEEDINGS
1-12-76	Before NEAHER, J - case called - deft & atty present - hearing on defts motion to withdraw his guilty plea begun - hearing concluded - decision reserved.
2-10-76	By NEAHER, J - Memorandum and Order filed granting defts motion to withdraw plea of guilty . Further the Court finds the deft competent to stand trial - Matter is set down for trial on Apr. 19, 1976 at 10:00 A.M. A final pre-trial status report will be held on Mar. 15, 1976 at 10:00 A.M.
2/27/76	Before NEAHER, J.- Case called- deft not present- counsel present- deft's bail application heard and denied-case adjd to 4/19/76 for trial bail contd
3-16-76	Motion for rehearing of reduction of bail; motion for order of dismissal filed (received from Chambers.)
3-16-76	Before NEAHER, J - case called - deft & counsel John Corbett present - defts motion for reduction of bail denied - adjd to 4-19-76 for trial.
3/16/76	Letter from deft dated 3/9/76 and notice of motion to dismiss filed
3-18-76	Stenographers transcript filed dated March 16, 1976
3-24-76	Voucher for Expert Services filed
3-25-76	Motion for bail hearing filed (received from Chambers & retd after filing same)
3-25-76	By NEAHER, J - Ord r filed that the deft be examined as to his mental capacity by Drs. Henry Fain and Daniel Schwartz of Kings County Hospital, Bklyn, N.Y. and that all written reports of such examination be furnished to the Court etc.
3-30-76	Order retd and filed - executed.
4-5-76	By Notice of motion filed under Rule 12.2(to introduce testimony relating to a mental disease, etc.)
4-6-76	By NEAHER, J - Order filed that Dr. Jack Eardley and Dr. Harry Fain examine the deft and conduct such tests as they feel necessary for the purpose of determining whether at the time of the commission of the alleged crime on 7-2-74, the deft was not responsible etc, as a result of a mental disease or defect, etc. (Order dated 4-5-76)
4-6-76	By Neaher, J - Authorization for preparation of trial filed.
4-6-76	By Neaher, J - Authorization for psychiatric examination and testimony at trial etc. filed.
4/9/76	Notice of motion to suppress filed ret. 4/19/76

DATE	PROCEEDINGS
4-19-76	Before NEAHER, J - case called - deft & counsel J.Corbett present - suppression hearing begun - defts motion to suppress is denied - Trial ordered and begun - Jurors selected and sworn - Trial contd to 4-20-76
4/20/76	Before NEAHER, J. - Case called- deft and counsel present- trial resumed Govt rests-deft's motion to dismiss and for judgment of acquittal denied trial contd to 4/21/76 at 10:00 A.M.
4/21/76	Before NEAHER, J.- Case called- deft and counsel present- trial resumed deft rests- trial contd to 4/22/76 at 10:00 A.M.
4-22-76(2)	two stenographers transcripts filed (pgs 1 to 391)
4-22-76	One stenographers transcript filed dated Jan. 12, 1976.
4-22-76	Before NEAHER, J - case called - deft & counsels present - trial resumed - deft moves for an order of dismissal and judgment of acquittal - motions denied -Jury retires to deliberate - jury returns with a verdict of guilty as to both counts - jury polled- jury discharged - defts bail status contd - case adjd to May 6, 1976 for sentence. Trial concluded,
4/23/76	Stenographers Transcript dated 4/22/76 filed
4/23/76	Voucher for expert services filed(court reporter)
5-6-76	Before NEAHER, J - case called - deft & counsel Mark Landsman and John Corbett present - deft is sentenced to imprisonment for a period of 10 years pursuant to 18:4208(a)(2) with credit for time served - sentence to be concurrent with the other indictments - execution of sentence is stayed - deft to be confined for 60 days on special condition that he will be an in-patient at the Veterans Administration Hosp. Northport Long Island taken there by a U.S.Marshal and will be obliged to surrender to the Marshal at the end of the 60 days.
5-6-76	Judgment & Commitment filed - certified copies to Marshal
5-6-76	By Neaher, J - Order filed that the US Marshals shall escort the deft to the Central Evaluation Service of the Payne-Whitney Clinic of the N.Y. Hospital on Friday, May 7, 1976 at or about 9:00 am
5/7/76	By NEAHER, J.- Order filed that Marshal's deliver deft to V.A. Hospital Northport L.I., etc.
5/7/76	Notice of appeal filed (No fee)
5/7/76	Docket entries and duplicate of notice of appeal mailed to c of a



TPP:RFK:sd  
F. B. I.

MEISTER, J.

7

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

75CR 501

----- X  
UNITED STATES OF AMERICA

- against -

GAYLORD ANGUISH,

Defendant.

----- X  
THE GRAND JURY CHARGES:

Cr. No.  
(Title 18, U.S.C., §2113(a)  
and §2113(d))

U.S. DISTRICT COURT L.D. NY  
JAN 21 1975  
REAS  
P.B.

COUNT ONE

On or about the 2nd day of July, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Bankers Trust of Suffolk, 1174 Jericho Turnpike, Commack, New York, approximately Eight Thousand Three Hundred Ninety Six Dollars (\$8,396.00), in United States currency, which money was in the care, custody, control, management and possession of the said Bankers Trust of Suffolk the deposits of which were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, §2113(a)).

COUNT TWO

On or about the 2nd day of July, 1974, within the Eastern District of New York, the defendant GAYLORD ANGUISH, knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the Bankers Trust of Suffolk, 1174 Jericho Turnpike, Commack, New York, approximately Eight Thousand Three Hundred Ninety Six Dollars (\$8,396.00), in United States currency, which money was in the care, custody, control, management and possession of the said Bankers Trust of Suffolk the deposits of which were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendant GAYLORD ANGUISH did assault and place in jeopardy

the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, 52113(d)).

A TRUE BILL.

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FOREMAN.

*H. Andrew D. Tracy*

UNITED STATES ATTORNEY  
Eastern District of New York

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA : 75 CR 50

-against- :

GAYLORD W. ANGUISH, :

Defendant. :

MEMORANDUM  
AND  
ORDER

- - - - - X

APPEARANCES:

DAVID G. TRAGER, ESQ.  
United States Attorney,  
Eastern District of New York  
By ROBERT KATZBERG, ESQ.  
Assistant U. S. Attorney

JOHN C. CORBETT, ESQ.  
Attorney for Defendant

NEAMER, District Judge.

On January 31, 1975, defendant offered a plea of guilty to count two of this bank robbery indictment in satisfaction of count one and of four other pending indictments charging other bank robberies, a California indictment charging bail jumping and a sixth unindicted bank robbery. After a Rule 11 inquiry, the court accepted the defendant's guilty plea. He has remained in custody since the plea

because of inability to make bail.

Prior to sentencing, the defendant underwent several psychiatric examinations intended to aid the court in determining what, if any, recommendations should be made at the time of sentence regarding treatment. One report, by a private psychiatrist, Dr. Laurence M. Bloom, after detailing several severe psychological wounds sustained by the defendant, now 33, during his life, including the suicide of his father when he was six or seven years old and the untimely deaths of his wife and older brother, concluded that the criminal episodes involved here were "committed in a state of psychotic depression" and recommended psychotherapy, "as much as possible and as soon as possible." This report also noted that the defendant had almost total amnesia concerning his childhood until age 12, which is twice the norm.

A contemporaneous report by a government psychiatrist, Dr. Naomi Goldstein, confirmed the existence of psychological problems stemming from the various traumas suffered by the defendant. It was her impression that he was suffering from a "schizophrenic reaction — latent, with depressive, neurotic and sociopathic features." While not

11

"overtly psychotic" she found his condition to be "a mild thinking disorder."

On May 22, 1975, the adjourned date set for sentencing, the government requested and the court ordered that the defendant be sent to Springfield for a §4244 examination to determine his "present mental condition and . . . whether he can receive suitable psychiatric treatment at that institution." See United States v. Polisi, 514 F.2d 977 (2 Cir. 1975).

On July 30, 1975 the §4244 report of the Springfield Medical Center diagnosed the defendant as "without psychosis" but suffering from "latent and pre or idealistic schizophrenia, by history." He was found mentally competent to stand trial but no opinion was expressed as to his responsibility at the time of the offense. The report suggested that "psychiatrists who saw him at the time of the alleged offense would be in a better position to make a valid opinion as to his responsibility."

By handwritten motion dated August 25, 1975, defendant pro se requested permission to withdraw his plea of guilty and to plead not guilty by reason of insanity.

By letter to the court dated September 4, 1975, defendant requested, in substance, that his retained counsel be relieved and new counsel appointed under the provisions of the Criminal Justice Act since he was without funds.

On September 8, 1975, the court relieved defendant's retained counsel and on September 10, 1975 appointed new counsel to represent him as requested. By notice of motion dated September 30, 1975 appointed counsel formally moved to withdraw the guilty plea. Rule 32(d), F.R.Crim.P. A hearing on the motion was held on January 12, 1976.

Motion to Withdraw Guilty Plea

The evidence adduced at the hearing supports defendant's contention that he pleaded guilty at least in part because his retained counsel had indicated an unwillingness to proceed to trial on an insanity defense. Rather than seeking different counsel, defendant chose to plead guilty and accept the benefits obtained through counsel's negotiations with the government attorney.<sup>1</sup>

The numerous psychiatric reports concerning the defendant submitted to the court subsequent to the entry of

the guilty plea reveal a history of psychological and emotional problems originating in early youth and continuing through adulthood. Since the psychiatric reports were intended for sentencing purposes, they did not really direct themselves to the question of criminal responsibility under United States v. Freeman, 357 F.2d 606 (2 Cir. 1966).

However, psychiatric testimony at the hearing, particularly that of Dr. Robert W. Collier, a psychiatrist at the Springfield Medical Center, strongly indicates that the defendant has been suffering from a personality disorder since childhood and has had a schizophrenic predisposition since approximately age 20.<sup>2</sup>

It has long been the rule that pre-sentence motions to withdraw guilty pleas should be granted with great liberality. See Kercheval v. United States, 274 U.S. 220, 224 (1927); United States v. McGirr, 434 F.2d 844, 847 (4 Cir. 1970); Gearhart v. United States, 272 F.2d 499 (D.C. Cir. 1959). The defendant, however, does have the burden of establishing a ground which makes the granting of the privilege fair and just. United States v. Giuliano, 348 F.2d 217, 221 (2 Cir. 1965).

Here, defendant has sustained that burden by showing that his claimed defense of lack of criminal responsibility is not frivolous. See United States v. McGirr, supra, 434 F.2d at 847; Gearhart v. United States, supra, 272 F.2d at 503. The evidence clearly supports the possibility that the defendant may have been actively psychotic at the time of the commission of the crimes and Dr. Collier testified that if he were then actively schizophrenic, it is possible that he would have been unable to conform his conduct to law.

In view of the slight amount of evidence of lack of criminal responsibility necessary to take that issue to the jury, see United States v. McGirr, supra, 434 F.2d at 849, the court believes that the proper exercise of discretion is to afford the defendant what would be his constitutional right but for the guilty plea.<sup>3</sup> Certainly at the time the plea was taken the court was unaware of the defendant's mental condition as detailed in the reports.

#### Competency to Stand Trial

Since the defendant is being permitted to withdraw his guilty plea and proceed to trial, it is necessary to determine his competency to do so. 18 U.S.C. §4244.

The issue is whether the defendant has

"sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and . . . has a rational as well as factual understanding of the proceedings against him."

Dusky v. United States, 362 U.S. 402 (1960), and is not "insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense," 18 U.S.C. §4244.

All of the psychiatric reports and psychiatric testimony at the hearing support the conclusion that the defendant is not presently psychotic and is presently competent to be tried. A complicating factor has arisen, however, because the defendant claims to have suffered an attack of amnesia in October 1975, completely blocking out his present memory of all events between late 1969 and October 1975. The defendant professes to remember occurrences between October 1975 and the present. Included in the "blocked out" time period are the events giving rise to the various indictments.

Much of the psychiatric testimony at the hearing was directed at the genuineness of this amnesia.<sup>4</sup> Although

the weight of psychiatric opinion was in favor of concluding that defendant's amnesia was more feigned than real, a resolution of this question is not essential to a determination of §4244 competency.

A claim of amnesia alone, either total or partial, does not per se establish incompetency to proceed. United States ex rel. Parson v. Anderson, 481 F.2d 94 (3 Cir.), cert. denied, 414 U.S. 1072 (1973); United States v. Sullivan, 406 F.2d 180, 185 (2 Cir. 1969); Wilson v. United States, 391 F.2d 460 (D.C. Cir. 1968). Rather, the specific inquiry is whether the amnesia substantially impairs the defendant's ability to defend himself. Cf. United States v. Knohl, 379 F.2d 427, 437-38 (2 Cir. 1967).

Here, the fact that the defendant committed the robberies charged is virtually, if not completely, conceded. The primary, if not sole, issue for the trier of fact will be whether the defendant should be held criminally responsible under the test adopted in United States v. Freeman, 357 F.2d 606 (2 Cir. 1966). The bulk of evidence on that question will, undoubtedly, be the testimony and reports of psychiatrists who have examined the defendant, supplemented by the

observations of lay witnesses present at the alleged robberies. While it is true that defendant's own testimony might tend to shed further light on this question, it cannot be said that its absence substantially impairs his ability to defend himself.

Accordingly, the defendant's motion to withdraw his previously entered plea of guilty is granted. Further, the court finds the defendant competent to proceed to trial.

The matter is set down for trial on April 19, 1976 at 10:00 a.m. A final pre-trial status report will be held on March 15, 1976 at 10:00 a.m.

SO ORDERED.

\_\_\_\_\_  
/s/ EDWARD R. NEAHER  
U. S. D. J.

Dated: Brooklyn, New York  
February 10, 1976

## FOOTNOTES

- 1 While the defendant was aware of his psychological problems at the time he consulted with his former counsel prior to agreeing to plead guilty, he was apparently more interested in obtaining psychiatric help as rapidly as possible than in testing his criminal responsibility before a jury.
- 2 Dr. Naomi Goldstein, Chief of Psychiatry at the Metropolitan Correctional Center, also described the defendant as a borderline psychotic, a latent schizophrenic.
- 3 Prejudice to the government is, of course, a countervailing factor to be considered. The government, however, has not asserted any prejudice resulting from reliance attributable to the entry of the guilty plea.
- 4 While Dr. Goldstein believed the amnesia to be genuine, she performed no tests and relied entirely on her clinical judgment. Dr. Daniel W. Schwartz, Director of Forensic Psychiatric Services of the Kings County Hospital Center — and a psychiatrist frequently utilized by the government — also found defendant suffering from a "retrograde amnesia" covering a five-year period. He, too, performed no tests and would not state his opinion with any degree of medical certainty.

Those conclusions were contradicted by the diagnoses of the several psychiatrists at Springfield Medical Center who chose to disbelieve the defendant largely on the basis of his being unconcerned about the claimed amnesia and his resistance to treatment likely to bring about a cure, e.g., an "amytol interview."

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## Appleby-Summarization

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one word did he speak about the facts. The facts  
are what this case is all about. That's what you  
should be thinking about in the jury room, the  
facts.

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Whatever psychiatric jargon Drs. Goldstein  
and Bloom came up with doesn't jibe with the facts,  
all I ask you to do when you go to the jury room,  
keep your eyeball on the real issue in this case,  
what happened on July 2nd, 1974, what did the  
defendant do? What were his actions indicating?  
That's all this case is about.

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THE COURT: Members of the jury, we are now  
at the stage of the trial where you're about to  
undertake your final function as jurors. Your  
duty is a serious and important one. In perform-  
ing it you actively share with the Court the  
responsibility of administering justice according  
to law and the evidence in the case. Your oath  
as jurors obliges you to discharge this final task  
in an attitude of complete fairness and impar-  
tiality and, as was emphasized by me when you  
were selected as jurors, without bias or prejudice  
for or against the Government or the defendant  
as parties to this controversy.

## 1                   Charge of the Court

2                   The case is, of course, important to the  
3                   Government since the enforcement of the criminal  
4                   laws is of prime importance to the welfare of the  
5                   community. Obviously it is equally important to  
6                   the defendant, who is charged with a serious crime  
7                   and has the right to receive a fundamentally fair  
8                   trial. The community has an interest in that, too.

9                   Let me add the fact the Government is a party  
10                  entitled<sup>s it</sup> to no greater consideration than that  
11                  accorded to any other party to a litigation. By  
12                  the same token, it is entitled to no less consider-  
13                  ation. All parties, Government and individuals  
14                  alike, stand as equals before the bar of justice.

15                  Your final role is to decide and pass upon  
16                  the fact issues in the case. You're the sole and  
17                  exclusive judges of the facts. You determine the  
18                  weight of the evidence. You appraise the credi-  
19                  bility of the witnesses. You draw the reasonable  
20                  inferences from the evidence. You resolve such con-  
21                  flicts as there may be in the evidence. I shall  
22                  later refer to how you determine the credibility  
23                  of witnesses. My final function is to instruct  
24                  you as to the law, and it is your duty to accept  
25                  these instructions as to the law and apply them

2 to the facts as you may find them.

3 With respect to any fact matter, it is your  
4 recollection and yours alone that governs. As  
5 I already told you, anything that counsel either  
6 for the Government or the defense may have said  
7 with respect to matters in evidence, whether during  
8 the trial, in a question, in argument, or in  
9 summation, is not to be substituted for your own  
10 recollection of the evidence. So, too, anything  
11 the Court may have said during the trial or may  
12 refer to during the course of these instructions  
13 as to any matter in evidence is not to be taken in  
14 lieu of your own recollection.

15 There are certain principles of law which  
16 apply to every criminal case and which I made  
17 reference to and emphasized at the time of your  
18 selection as jurors. I repeat them to you.

19 The indictment is merely an accusation, a  
20 charge. It's no evidence or proof of a defendant's  
21 guilt. The defendant on trial has pleaded not  
22 guilty, thus the Government has the burden of  
23 proving the charge against him beyond a reasonable  
24 doubt. He ~~does~~ not have to prove his innocence.  
25 On the contrary, he is presumed to be innocent of

## 1                    Charge of the Court

2                    the accusations contained in the indictment.  
3                    This presumption of innocence was in his favor  
4                    at the start of the trial, continued in his favor  
5                    throughout the entire trial, is in his favor even  
6                    as I instruct you now, and remains in his favor  
7                    during the course of your deliberations in the  
8                    jury room. It is removed only if and when you  
9                    are satisfied the Government has sustained its  
10                  burden of proving the guilt of the defendant beyond  
11                  a reasonable doubt.

12                  The question that naturally comes up is,  
13                  What is a reasonable doubt? The words almost de-  
14                  fine themselves: that there is a doubt founded in  
15                  reason and arising out of the evidence in the  
16                  case or the lack of evidence. It is a doubt which  
17                  a reasonable person has after carefully weighing  
18                  all the evidence. Reasonable doubt is a doubt  
19                  which appeals to your reason, your judgment, your  
20                  common sense and your experience. It is not  
21                  caprice, whim, speculation, conjecture or suspi-  
22                  cion. It is not an excuse to avoid the performance  
23                  of an unpleasant duty. It is not sympathy for a  
24                  defendant.

25                  If, after a fair and impartial consideration  
of all the evidence you can candidly and honestly

## 1 Charge of the Court

2 say you're not satisfied of the guilt of the  
3 defendant, that you do not have an abiding convic-  
4 tion of his guilt, in sum, you have such a doubt  
5 that causes you as prudent persons to hesitate  
6 before acting in matters of importance to your-  
7 selves, then you have a reasonable doubt, and in  
8 that circumstance it is your duty to acquit.

9 On the other hand, if, after such an  
10 impartial and fair consideration of all the evi-  
11 dence you can candidly and honestly say you do  
12 have an abiding conviction of the defendant's  
13 guilt, such a conviction as you would be willing  
14 to act upon in important and weighty matters in  
15 the personal affairs of your own life, then you  
16 have no reasonable doubt, and under such circum-  
17 stances it is your duty to convict.

18 One final word on this subject. Reasonable  
19 doubt does not mean a positive certainty or beyond  
20 all possible doubt. If that were the rule,  
21 few persons, however guilty they might be, would  
22 be convicted. It is practically impossible for a  
23 person to be absolutely and completely convinced  
24 of any controverted fact which by its nature is  
25 not susceptible of mathematical certainty. In

## 1 Charge of the Court .

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2 consequence, the law in a criminal case is that it  
3 is sufficient if the guilt of the defendant is  
4 established beyond a reasonable doubt. Not beyond  
5 all possible doubt.

6 With that general background in mind, we will  
7 now consider the specific charges against the  
8 defendant. First, I will re-read to you the indict-  
9 ment.

10 The grand jury charges, Count 1: On or  
11 about the second day of July, 1974, within the  
12 Eastern District of New York, the defendant Gaylord  
13 Anguish, knowingly and willfully, by force,  
14 violence, and intimidation, did take from the  
15 person and presence of employees of the Bankers  
16 Trust of Suffolk, Jericho Turnpike, Commack, New  
17 York, approximately \$8,396 in United States currency,  
18 which money was in the care, custody, control,  
19 management and possession of the said Bankers  
20 Trust of Suffolk, the deposits of which were then  
21 and there insured by the Federal Deposit Insurance  
22 Corporation.

23 Count 2 repeats exactly what I have just  
24 read to you but adds that in the commission of  
25 this act and offense the defendant Gaylord Anguish

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Charge of the Court

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did assault and place in jeopardy the lives of  
the said bank employees as well as the lives of  
other persons present by the use of a dangerous  
weapon.

6

The indictment, as you note, contains two  
counts because the defendant is charged with two  
separate offenses under the Federal Bank Robbery  
Act. In general terms, that Act was designed to  
protect money, property or other things of value  
held by nationally organized or federally insured  
banks against loss by robbery, theft or other  
unauthorized taking.

14

In Count 1 the defendant is charged with  
knowingly and willfully taking a sum of \$8,396  
from the employees of the Bankers Trust by the use  
of force, violence and intimidation.

18

In Count 2 he is charged with assaulting and  
placing in jeopardy the lives of the bank employees  
by the use of a dangerous weapon in the commis-  
sion of the bank robbery.

22

In order to sustain its burden of proof  
with respect to Count 1 of the indictment, the  
Government must establish beyond a reasonable  
doubt the following essential elements:

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Charge of the Court

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One, that on or about July 2, 1974, the  
Bankers Trust of Suffolk was a bank the deposits  
of which were insured by the Federal Deposit  
Insurance Corporation.

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Two, that on or about that date, July 2,  
1974, the defendant on trial took money which  
belonged to or was in the care, custody, control,  
management or possession of that bank.

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Three, that the money was taken from the  
person or presence of one or more persons other  
than the defendant, namely, employees of the bank.

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Four, that the defendant accomplished the  
taking by force and violence or by intimidation.

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In order to sustain its burden of proving  
the charge in Count 2 against the defendant, the  
Government must in addition to the foregoing  
elements, establish beyond a reasonable doubt that  
the defendant accomplished the taking by assaulting  
and placing in jeopardy the lives of the bank  
employees through the use of a dangerous weapon.

Before explaining some of the terms which  
appear in the foregoing statement of elements,  
I call your attention to Government's Exhibit 3  
in evidence, which is a stipulation of facts

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## Charge of the Court

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agreed to between counsel for the Government and counsel for the defendant. In brief, it is stipulated as a fact that the Bankers Trust of Suffolk was a member of the Federal Deposit Insurance Corporation on July 2, 1974; that a bank robbery did occur at that bank on July 2, 1974, and that thereafter an audit was made which determined the bank suffered a loss of \$8,396 as a result of the robbery. Those are stipulated facts which I explained to you may be taken by you as evidence, as facts established by the evidence in the case, and you may rely upon them in arriving at your verdict. However, it is still necessary for you as the jury to find beyond a reasonable doubt each of the elements I explained with regard to the bank being federally insured, et cetera, and so forth.

The words "by force and violence or by intimidation" as used in the statement of elements are to be taken in their ordinary sense. The word "assault" in connection with the use of a dangerous weapon simply means an unlawful threat to do physical harm to another, causing a present fear of immediate harm. To put a person in jeopardy,

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## Charge of the Court

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however, is not only to make him fear that he  
will be injured or killed, but also expose him to  
serious risk or danger that he will be, by the  
use of a dangerous weapon. For purposes of the  
federal bank robbery, however, the weapon need not  
be loaded in order to be considered a dangerous  
weapon.

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In addition to the foregoing essential  
elements of the crime of bank robbery, there is an  
essential element which must be shown to exist  
beyond a reasonable doubt before a defendant may  
be convicted. That is the requirement as alleged  
in the indictment here that this defendant had  
acted knowingly and willfully. An act is done  
knowingly if it is done voluntarily and intention-  
ally and not because of mistake or accident or other  
non-criminal reason. An act is done willfully if  
it is done voluntarily and intentionally and with  
the specific intention to do something the law  
forbids, that is with a bad purpose, either to dis-  
obey or disregard the law. Knowledge and willful-  
ness exist in the mind, and in this case, par-  
ticularly in view of the defense of insanity  
which has been raised, the Government has the

## Charge of the Court

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burden of proving beyond a reasonable doubt that  
the defendant was sane at the time of the commis-  
sion of the alleged bank robbery.

Moreover, if you should find from the  
evidence in the case beyond a reasonable doubt that  
the defendant was not insane at the time of the  
alleged offense, it is still your duty to con-  
sider all the evidence in the case which may aid  
in the determination of the state of mind, includ-  
ing all evidence offered on the issue as to in-  
sanity, in order to determine whether the defendant  
acted with the requisite intent as charged.

If, upon the evidence, you are left with  
a reasonable doubt as to whether the mind of the  
defendant was capable of forming or did form the  
requisite intent to commit the crime charged,  
then it is your duty to acquit him. The state  
of mind of a defendant, whether he acted knowingly,  
willfully and with intent to commit the crime of  
bank robbery will have to be inferred by you from  
the circumstances as revealed by all the evidence  
in the case. The drawing of inferences from facts  
you find to be established by the evidence is the  
special task you are called upon to perform as

## 1                   Charge of the Court

2                   jurors.

3                   Inferences are simply deductions or con-  
4                   clusions which reason and common sense lead you  
5                   to draw from such facts. But you must always bear  
6                   in mind that before you reach a conclusion of  
7                   guilt as to the defendant upon any of the charges  
8                   in the indictment, you must be satisfied that  
9                   the evidence leads to such a conclusion beyond a  
10                  reasonable doubt.

11                  Under the defendant's plea of not guilty  
12                  there is an issue as to his sanity at the time  
13                  of the alleged offense. The law does not hold  
14                  a person criminally accountable for his conduct  
15                  while insane, since an insane person is not  
16                  capable of forming the intent essential to the  
17                  commission of a crime. The sanity of the defendant  
18                  at the time of the commission of the alleged offense  
19                  is an element of the crime charged and must be  
20                  established by the Government beyond a reasonable  
21                  doubt just as it must establish every other  
22                  element of the offense charged.

23                  A defendant is insane within the meaning of  
24                  these instructions if at the time of the alleged  
25                  criminal conduct, as a result of mental disease

## 1                   Charge of the Court

2                   or defect, he lacks substantial capacity either to  
3                   appreciate the wrongfulness of his conduct or to  
4                   conform his conduct to the requirements of law.

5                   As used in these instructions, the terms  
6                   mental disease or defect do not include an  
7                   abnormality manifested only by repeated criminal  
8                   or otherwise antisocial conduct. For the purpose  
9                   of throwing light upon the mental condition of  
10                  the accused at the time of the alleged offense,  
11                  you, the jury, may consider evidence of his mental  
12                  state, both before and after that time. The  
13                  material issue, however, is whether the defendant  
14                  was sane or insane at the time of the alleged  
15                  criminal conduct in the indictment.

16                  Temporary insanity as well as insanity of  
17                  longer duration is recognized by the law. If  
18                  the evidence in the case leaves you with a reason-  
19                  able doubt as to whether the defendant was sane  
20                  at the time of the alleged offense, you will find  
21                  him not guilty even though it may appear that he  
22                  was sane at earlier and later times.

23                  The term "insanity" does not require a  
24                  showing that the defendant was disoriented as to  
25                  time or place. Mental disease or defect includes

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Charge of the Court

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any abnormal condition of the mind regardless of  
its medical label which substantially affects  
mental or emotional processes and substantially  
impairs behavior controls. The term "behavior  
controls" refers to the processes and capacity  
of a person to regulate and control his conduct and  
his actions.

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In considering whether the defendant had  
a mental disease or defect at the time of the  
unlawful act with which he is charged, you may  
consider testimony in this case concerning the  
development, adaptation and functioning of these  
mental and emotional processes and behavior con-  
trols.

16

As I said before, the burden is on the  
Government to prove beyond a reasonable doubt  
either that the defendant was not suffering from a  
mental disease or defect or else that he never-  
theless had substantial capacity, both to  
conform his conduct to the requirements of the  
law and to appreciate the wrongfulness of his  
conduct. If the Government has not established  
this beyond a reasonable doubt, you shall bring in  
a verdict of not guilty.

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## Charge of the Court

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In this case, on this issue of insanity, you have heard some witnesses testify as experts giving their opinions. Ordinarily, opinions are not allowed as evidence in the course of a trial. An exception is made, however, where the opinions involve some learned medical science, such as medicine or psychiatry or engineering or what have you. In that case, people especially learned in the art or science are brought in for the express purpose of informing you, the jury, as to the particular knowledge of the expert in his field and his opinion.

It is entirely within your province to determine what weight shall be given to those opinions. You are not bound by the testimony of experts. The weight to be given the testimony of experts is governed in the same manner as the evidence of other witnesses: that is, by applying your common sense, everyday experience. You apply the same standards in appraising the quality and credibility of the expert testimony as you do in the case of other witnesses to which I will shortly refer.

In considering the issue of insanity, you may consider the evidence that has been admitted

2 as to the defendant's mental condition before and  
3 after the offense charged as well as the evidence  
4 as to the defendant's mental condition on that date.

5 The evidence as to the defendant's mental  
6 condition before and after that date was admitted  
7 solely for the purpose of assisting you to deter-  
8 mine the defendant's condition on the date of the  
9 alleged offense.

10 As I told you at the time, evidence was  
11 allowed here with regard to certain before and  
12 after bank robbery episodes, and I pointed out  
13 at that time that that evidence was admitted solely  
14 for the purpose of considering the mental state  
15 of the defendant and none of those prior acts or  
16 subsequent acts would serve as a basis for convict-  
17 ing him in and of themselves. You understand that--  
18 that he's on trial for the bank robbery which  
19 occurred on July 2nd, 1974, and no other bank  
20 robbery.

21 (Continued on the next page.)

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## Charge

Now, in addition to experts you also heard the testimony of lay witnesses with respect to their observation of the defendant's appearance, behavior, speech and action. Such persons are permitted to testify as to their own observations and other facts known to them and may express an opinion also based upon those observations and facts known to them.

In weighing the testimony of such lay witnesses you may consider the circumstances of each witness, his opportunity to observe the defendant and to know the facts to which he has testified, his willingness and capacity to expound freely as to his observations and knowledge, the basis for opinion and conclusions and the nearness or remoteness of his observations of the defendant in point of time to the commission of the offense charged.

You may also consider whether the witness observed extraordinary or bizarre acts performed by the defendant or whether the witness observed the defendant's conduct to be free of such extraordinary or bizarre acts.

In evaluating such testimony you should take into account the extent of the witness' observation of the defendant and the nature and length of time

## Charge

of the witness' contact with the defendant.

You should bear in mind that an untrained person may not be readily able to detect mental disease or defect and the failure of a lay witness to observe abnormal acts by the defendant may be significant only if the witness had prolonged an intimate contact with the defendant.

Now, in this case you have heard what is known as both direct and circumstantial evidence. Direct evidence is where a witness testified to what he saw, heard and observed and what he knows of his own knowledge, that which comes to him by virtue of his senses. Circumstantial evidence is where facts are established from which in terms of common sense one may logically infer other facts that are sought to be established. Circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced of the reasonable doubt of the guilt of a defendant.

Inasmuch as counsel for each of the parties to this case have summed up their views of the evidence, I do not believe it would serve any useful purpose for me to comment upon it. All evidence, whether or not it was referred to in the arguments of counsel or

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## Charge

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mentioned in any other manner is important and must be considered by you.

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If I have at any time made any reference to testimony which does not agree with your recollection, you are, as I said before, to disregard such reference by me and to allow only your own recollection to govern. It is yours and yours alone that must govern and you must unhesitatingly reject any statement as to a fact which either counsel or Court may have made which does not accord with your own recollection.

It must be apparent to you that the versions of the Government and defense with respect to the question of the state of mind of this defendant are in sharp divergence on key points and that critical issues of fact and credibility are raised. You are called upon to decide the factual issues here.

How do you decide this? I think you understand why at the start of the trial I suggested that it would be desirable and important for you not only to listen but to look at the witnesses as they testify. Your determination of the issue of credibility very largely must depend upon the impression that a witness made upon you as to whether or not he was telling the truth or giving you an accurate version of what occurred.

4      1  
Charge

2            I often say to jurors when you walk in the door  
3            of a courtroom and sit in the jury box while the trial  
4            is going on, and later on when you are deliberating  
5            in the jury room, you have your common sense, your  
6            good judgment and your experience with you. You  
7            decide whether or not a witness was straightforward  
8            and truthful, whether he attempted to conceal anything,  
9            whether he has a motive to testify falsely, whether  
10          there is any reason why he might color his testimony.

11           In other words, what you try to do, to use the  
12          vernacular, is to size a person up just as you would  
13          do, as I have said before, in any important matter  
14          where you are undertaking to determine whether or not  
15          a person is truthful, candid and straightforward.

16           Passing upon the credibility of a witness you  
17          may also take into account inconsistencies or con-  
18          tradictions as to material matters in his own testimony  
19          or any conflict with that of another witness. The  
20          witness, however, may be inaccurate, contradictory or  
21          even untruthful in some respects and yet be entirely  
22          credible in the essentials of his testimony. The  
23          ultimate question for you to decide in passing upon  
24          credibility is did the witness tell the truth here  
25          before you as to essential matters.

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The fact that some Government witnesses were  
Government employees does not entitle their testimony  
to any greater weight or consideration than that  
afforded to any other witness in the case. You will  
evaluate their credibility the same as you do that of  
other witnesses.

8

If you find that any witness, and this applies  
alike to Government and defense, wilfully testified  
falsely as to any material fact, you have a right to  
reject the testimony of that witness in its entirety  
or you may accept that part or portion or portions  
which commend itself to your belief as credible.

14

The defendant has not testified in this case.  
That is his absolute right and in no respect may be  
considered by you as any evidence against him or as a  
basis for any presumption or inference unfavorable  
to him. You must not permit that fact to weigh in the  
slightest degree against him nor should it enter  
into your deliberations or discussion.

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The guilt or innocence of the defendant on trial  
before you is for you and you alone to determine.

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During the course of the trial the attorneys  
at various times objected to certain questions and  
moved to strike answers and have taken other procedural

## Charge

positions before you. These are matters of technical procedure that are the proper concern of attorneys and should not concern you. I instruct you you are not to draw any inferences from the fact that attorneys have made objections and motions before you during the trial

The Government to prevail must prove the essential elements I have described by the required degree of proof as already explained in these instructions. If it succeeds, your verdict should be guilty; if it fails, it should be not guilty. Your verdict in each instance must be unanimous. Your function is to weigh the evidence in the case and determine the guilt or innocence of the defendant solely upon the basis of such evidence and these instructions.

Under your oath as jurors, you cannot allow a consideration of the sentence which may be imposed upon a defendant if convicted to enter into your deliberations or influence your verdict in any way. Your duty is to decide the case solely and only upon the evidence. In the event of a conviction, the duty if imposing sentence rests solely with the Court.

Each juror is entitled to his or her own opinion but each should however exchange views with his fellow

## Charge

(Continued on next page.)

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## Charge of the Court

2 All right, members of the jury, I am going to  
3 let you go out to the jury room for a few minutes  
4 while I give counsel the opportunity to determine  
5 whether I have omitted or misspoken anything in my  
6 instructions to you.

7 I am also at this time going to excuse two  
8 alternate jurors for whose patience I am grateful.  
9 It is your unhappy lot to have sat through the trial  
10 and not be in at the finish. However, your presence  
11 was indispensable because lacking the foresight of  
12 the Almighty, we never know when a juror in the  
13 first 12 may not be present and your filling the void  
14 would be indispensable so that we might have a  
15 jury of 12 required by the Constitution. So I  
16 excuse you both at this time. The Clerk will give  
17 you the cards and you may check downstairs and  
18 probably go home. Thank you very much.

19 The jury is excused.

20 (The jury left the courtroom.)

21 MR. APPLERY: No exceptions, your Honor.

22 MR. CORBETT: No exceptions, your Honor.

23 THE COURT: All right, I thank you. In that  
24 case let us get the marshal here.

25 (A marshal was duly sworn.)

## 1                   Charge of the Court

2                   THE COURT: I did not tell them what they must  
3                   do in case they ask questions. I think I will bring  
4                   them in again to do that.

5                   (Jury took its place in the jury box.)

6                   THE COURT: Counsel have indicated to the Court  
7                   there are no additions to the charge. However, I  
8                   brought you in to inform you that if during the course  
9                   of your deliberations it becomes necessary to make  
10                  an inquiry directed to the Court you may do so by  
11                  simply writing a note and giving it to the marshal  
12                  who guards your door and he will deliver it to the  
13                  Court. Sometimes the question may involve convening  
14                  counsel and discussing it with counsel before calling  
15                  in the jury.

16                  Juror No. 1 will serve as your foreperson,  
17                  to be neutral about this, and I might also add that  
18                  the exhibits are available if you wish to have them  
19                  brought in for any reason. Of course, if some  
20                  questions should arise as to what some witness  
21                  testified to or perhaps did not testify to, that  
22                  can be resolved by a rereading of the testimony  
23                  should that be necessary. I do not recommend or  
24                  suggest large blocks of testimony be reread but rather  
25                  that you only attempt to resolve any difference that

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1 Charge of the Court

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2 may be important as to your recollection. You under-  
3 stand that that will focus matters a lot better from  
4 your standpoint.

5 All right, you may resume your deliberations.

6 (The jury left the courtroom and the Court was  
7 recessed.)

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(continued next page)

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